

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

FILED  
DEC 14 2016  
Clerk, U.S. District Court  
District Of Montana  
Missoula

LOUIS WAGNER,

Petitioner,

vs.

LEROY KIRKEGARD, ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA, et al.,

Respondents.

CV 16-87-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this matter on November 16, 2016, recommending denial of Petitioner Louis Wagner's ("Wagner") application for writ of habeas corpus under 28 U.S.C. § 2254. The parties failed to timely object to the Findings and Recommendations, and so waived their right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v.*

*Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston's conclusion that Wagner's petition is now moot because he is no longer incarcerated. The Court further agrees that Wagner's petition fails to raise a continuing injury or collateral consequence as a result of his incarceration.

Accordingly, there being no clear error in Judge Johnston's Findings and Recommendations, IT IS ORDERED that:

- (1) Judge Johnston's Findings and Recommendations (Doc. 10) are ADOPTED IN FULL.
- (2) Wagner's petition (doc. 1) is DENIED as moot.
- (3) The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.
- (4) A certificate of appealability is DENIED.

Dated this 14<sup>th</sup> day of December, 2016



Dana L. Christensen  
Dana L. Christensen, Chief Judge  
United States District Court